

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re  
VIRGINIA PON, et al.,  
Alleged Debtors.

Involuntary Case No. 91-3-4765-LK/MM

GOLDEN DIAMOND INVESTMENTS, a  
California limited, partnership,  
Alleged Debtor,

Involuntary Case No. 91-3-4979-LK/MM

VIGINIA QUAN, individually and aka V-2  
Investments,  
Alleged Debtor.

Involuntary Case No. 91-3-5114-LK/MM

**MOTION TO QUASH SUBPOENAS AND  
MOTIONS IN LIMINE**

**A. Pon's Motion to Quash Subpoena**

1. Summary: Quash subpoena served on November 13, 1992 requesting original documents.
2. Disposition
  - a. Grant with respect to:
    - 1) Documents the authenticity of which Pon is not objecting to, including documents that are a matter of public record (recorded Power of Attorney, filed declaration); and
    - 2) Documents over which Pon has neither custody nor control, including original of D & K/Lau Construction contract and originals of correspondence of which Pon was neither author nor recipient.

### B. Pon's Motions in Limine

1. Exclusion of Expert Testimony of Iain McDonald
  - a. Disposition: Deny
  - b. Authority
    - 1) FRE 702: If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion

1 or otherwise.

2 2) Wood v. Stihl, Inc., 705 F.2d 1101, 1109 (9th Cir. 1983)(trial court vested  
3 with broad discretion concerning admission or exclusion of expert testimony; manifest error  
4 standard). But see Pon's Brief re admission of attorney expert testimony)

5 2. Exclusion of D & K Exh, H, L, BT (D & K/Lau Const. Contract) for failure to satisfy best  
6 evidence rule.

7 Disposition: Grant

8 a. FRCP 1003: A duplicate is admissible to the same extent as an original unless (1) a  
9 genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be  
10 unfair to admit the duplicate in lieu of the original.

11 b. U.S. v. Skillman, 922 F.2d 1370, 1375 (9th Cir. 1990), cert. denied, 112 S.Ct. 353  
12 (1991)(duplicate admissible where no genuine issue as to authenticity, and no evidence that original  
13 was lost in bad faith)

14 c. FRCP 1004: duplicate OK if original lost or destroyed, but Kissinger testified he has  
15 original.

16 3. Exclusion of documents not produced in pretrial discovery and purporting to evidence D & K  
17 and Kissinger's prepetition knowledge re Pon's financial condition.

18 Disposition: Deny

19  
20 **C. Scope of Waiver of Attorney/Client Privilege**

21 1. Chevron v. Pennzoil, 974 F.2d 1156, 1162 (9th Cir. 1992)(disclosure of information resulting  
22 in waiver of privilege constitutes waiver only as to communications about the matter actually  
23 disclosed; where party raises claim [or defenses] whihc in fairness requires disclosure of protected  
24 information, privilege may be impliedly waived)